(1)

Supreme Court, U.S.
FILED

No. 00-1008 DEC 18 2000

OFFICE OF THE CLERK

In The

Supreme Court of the United States

JERRY TURNBOW-GARLINGTON,

Petitioner,

v.

M. ENGLISH, FLETCHER GOBER, PERRY DAVIS, DEFENDANT GAUSE, MAURICE C. KENNARD,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

RALPH GOLDBERG
315 W. Ponce de Leon Ave.
Suite 430
Decatur, GA 30030
(404) 377-4615
Attorney of Record for Petitioner

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

37 pp

QUESTIONS PRESENTED

1) Where the deceased was a pretrial detainee with mental health problems, and thus highly susceptible to attack, and the assailant had attacked one other inmate a short time earlier, were jail officials deliberately indifferent under *Farmer v. Brennan*, 511 U.S. 825 (1994), in failing to protect the deceased? Does the *Farmer* standard even apply to pretrial detainees?

2) Should the principles of *Reeves v. Sanderson Plumbing Products, Inc.*, 120 S.Ct. 2097, 2108 (2000), be applied to a case arising under 42 U.S.C. §1983 and summary judgment under F.R.C.P. 56?

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF AUTHORITIES iii

OPINIONS BELOW 1

JURISDICTION 1

STATUTORY PROVISIONS INVOLVED 1

STATEMENT 3

A. Facts 3

B. Proceedings Below 5

REASONS FOR GRANTING THE PETITION 5

1. The Courts' Interpretation Of *Farmer* Is Directly Contradictory To *Farmer*'s Admonition That A Fact Finder May Infer From An Obvious Risk of Danger That Defendants Actually Realized Such Danger 6

2. The Court's Decision Below Directly Conflicts With *Farmer*, *Anderson v. Liberty Lobby, Inc.*, And *Reeves v. Anderson Plumbing Products, Inc.* 10

CONCLUSION 12

APPENDIX A 1a

APPENDIX B 3a

TABLE OF AUTHORITIES

Page

CASES

Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1985) 10

Bell v. Wolfish, 441 U.S. 520 (1979) 6

Billman v. Indiana Dept. of Corrections, 56 F.3d 785 (7th Cir. 1995) 11

Butler v. Dowd, 979 F.2d 661 (8th Cir. 1992) 9

City of Revere v. Massachusetts General Hospital, 463 U.S. 239 (1983) 6

Farmer v. Brennan, 511 U.S. 825 (1994)..... *passim*

Gullatte v. Potts, 654 F.2d 1007 (5th Cir. 1981) 8

Haley v. Gross, 86 F.3d 630 (7th Cir. 1986) 10

Hare v. City of Corinth, 74 F.3d 633 (5th Cir. 1996) 7

Helling v. McKinney, 113 S.Ct. 2475 (1993) 6

Reece v. Groose, 60 F.3d 487 (8th Cir. 1995) 9

Reeves v. Sanderson Plumbing Products, Inc., 120 S.Ct. 2097 (2000)..... 11

Taylor v. Michigan Dept. of Corrections, 69 F.3d 76 (6th Cir. 1995)..... 9

Withers v. Levine, 615 F.2d 158 (4th Cir. 1980)..... 8

Zarnes v. Rhodes, 64 F.3d 2851 (7th Cir. 1995)..... 10

STATUTES AND RULES

Fourteenth Amendment..... 1

28 U.S.C. §1254 (1) 1

42 U.S.C. §1983..... 1, 3, 11

TABLE OF AUTHORITIES – Continued

Page

F.R.C.P. 50 11

F.R.C.P. 56 2

MISCELLANEOUS

Mushlin, Rights of Prisoners 2d Ed. (1993) at §2.06 6

PETITION FOR A WRIT OF CERTIORARI

Jerry Turnbow-Garlington respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra* 1a) is unreported. The opinion of the district court (App., *infra* 3a-20a) is unreported.

JURISDICTION

The court of appeals entered its judgment on September 18, 2000 (App., *infra* 1a). The jurisdiction of this Court is invoked under 28 U.S.C. §1254 (1).

STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment provides in relevant part:

> . . . nor shall any State deprive any person of life, liberty, or property, without due process of law.

42 U.S.C. §1983 provides in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . , subjects, or causes to be subjected,

> any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

F.R.C.P. 56 provides in relevant part:

> **(b) For Defending Party.** A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof. . . .
>
> **(e) Form of Affidavits; Further Testimony; Defense Required.** Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set for the specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary

judgment, if appropriate, shall be entered against the adverse party.

STATEMENT

On February 20, 1998, plaintiff filed suit under 42 U.S.C. §1983 against a number of employees[1] of the DeKalb County, Georgia Sheriff's Department for the wrongful death of her son, a pretrial detainee. The District Court granted summary judgment against the plaintiff. The Court of Appeals affirmed on the basis of the District Court's opinion.

A. Facts

Eric Turnbow, deceased, was the son of plaintiff. He was a pretrial detainee in the Dekalb County, Georgia jail. As the District Court found (App. 12a), he "was mentally ill."[2] The Court also noted:

> A magistrate judge directed a mental health evaluation of Turnbow at the GMHI, which never occurred. On the evenings of February 19 through 21, he refused to take his medication, as administered by jail medical staff. He was relocated to Cell 411 on February 22, 1996, and then either moved into Cell 415 of his own will or was moved there by fellow inmates.

---

[1] And others not relevant to these proceedings.

[2] An evaluation of the deceased on February 16, 1996, noted him to be "hyperverbal, delusional, and paranoid."

> Jail staff either did not know about the move or did not do anything about it. Richard Dover, who was also mentally ill and had exhibited violent tendencies by getting into a fight with an inmate the week before, was in Cell 415 as well. Jail records show that on January 3, 1996, a mental health referral was made on behalf of Dover because he was acting strangely with a razor, and he had razor cuts. Other reports stated that he talked to himself and hit the walls.

(App. 12a). On February 25, 1996, Dover beat plaintiff's son senseless, and he thereafter died.

There is evidence that defendant Gober, the morning watch commander, relocated the deceased to the new cell. There is evidence that both defendants Gause and Davis saw plaintiff in Cell 415 before the attack, that defendant English knew that Dover had been acting up and that defendant Kennard knew at least as early as February 22, 1996, that the deceased was a mentally ill patient. *See also* App. 13a. Davis had seen the deceased come to the day-room door and bang his head on the door. One inmate had stated that Dover "will try to hurt you. . . . They knew how he was." Indeed, Richard Dover had refused to give his name to the authorities.[3]

In other words, there is evidence that the deceased was particularly susceptible to attack and that the assailant had attacked another inmate one week earlier. There is no competent evidence of record from any of the defendants mentioned herein that they were unaware of

---

[3] He was "John Doe" and had been arrested for public drunkenness and disorderly conduct.

the mental condition of each inmate or unaware that Dover had attacked another inmate one week earlier.

B. Proceedings Below

The instant case was dismissed on summary judgment. The District Court held as a matter of law that plaintiff had not met the standards enunciated in *Farmer v. Brennan*, 511 U.S. 825 (1994) (App. 13a), in particular

> that there was an excessive risk to Turnbow posed by his being in a cell with Dover, nor do they show that any of the jail personnel knew about a substantial risk of serious harm to Turnbow and disregarded it.

The Court of Appeals affirmed on the basis of the District Court's opinion.

REASONS FOR GRANTING THE PETITION

This Court should grant the petition for writ of certiorari to clarify how the standards of *Farmer v. Brennan*, 511 U.S. 825 (1994), apply to a pretrial detainee, or if in fact such standards even apply, in the context of a summary judgment motion where the risk to the deceased was obvious because he was mentally ill.

1. The Courts' Interpretation Of *Farmer* Is Directly Contradictory To *Farmer*'s Admonition That A Fact Finder May Infer From An Obvious Risk of Danger That Defendants Actually Realized Such Danger

> No one knows for certain how much violence takes place in American prisons since so much of it is not reported. However, what is known is alarming. One commentator reported that "incarceration subjects convicts to a murder rate eight times greater than that found outside prison and an assault rate exceeding the prison murder rate by twenty-fold."

Mushlin, Rights of Prisoners 2d Ed. (1993) at §2.06.

As the Court explained:

> When the State takes a person into its custody and holds him there against his will, the Constitution impose[s] upon it a corresponding duty to assume some responsibility for his safety and well-being.

Helling v. McKinney, 113 S.Ct. 2475, 2480 (1993). These principles apply with at least as much force to pretrial detainees.

The Courts below applied the cruel and unusual punishment standard of *Farmer v. Brennan*, 511 U.S. 825 (1994), to this case, *see City of Revere v. Massachusetts General Hospital*, 463 U.S. 239, 244 (1983).[4]

---

[4] Why *Farmer*'s Eighth Amendment standard should apply by implication to a pretrial detainee is unclear to petitioner, *see Bell v. Wolfish*, 441 U.S. 520 (1979). *Compare* the majority and

In *Farmer*, this Court cautioned

> the cases are clear that [deliberate indifference] is satisfied by something less than acts or omissions for the very purpose of causing harm or with knowledge that harm will result.

511 U.S. at 835, and explicitly reminded that those inmates "need not show that a prison official acted or failed to act believing that harm actually would befall an inmate; it is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm." *Id.*

> We doubt that a subjective approach will present prison officials with any serious motivation 'to take refuge in the zone between ignorance of obvious risks' and 'actual knowledge of risks.'

Id.

> Whether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including inferences from circumstantial evidence.

Id. Indeed,

> [i]f the risk is obvious, so that a reasonable man would realize it, we might well infer that the defendant did in fact realize it.

Id. In words that might have been written for this case, the Court forthrightly stated:

---

concurring opinions in *Hare v. City of Corinth*, 74 F.3d 633 (5th Cir. 1996). Whatever standard is applied, petitioner met such standard for the purposes of summary judgment. *See Farmer v. Brennan*, 511 U.S. at 854-855 (Blackmun, J. concurring).

> it does not matter whether the risk comes from a single source or multiple sources, any more than it matters whether a prisoner faces an excessive risk of attack for reasons personal to him or because all prisoners in his situation face such a risk . . . *[a] prisoner can establish exposure to a sufficiently serious risk of harm by showing that he belongs to an identifiable group of prisoners who are frequently singled out for violent attack by other inmates.*

(Emphasis added). *Id.* at 843. Nor does it matter for "liability that the officials could not guess beforehand precisely who would attack whom." *Id.* at 844.

Furthermore, it is the burden of the defendants "to prove that they were unaware even of an obvious risk to inmate health or safety." *Id.* Finally, it matters not the inmate failed to give advance notification of the attack. *Id.* at 849.

The decisions of the Courts below are not faithful to this precedent.

Ever since *Gullatte v. Potts,* 654 F.2d 1007 (5th Cir. 1981), and *Withers v. Levine,* 615 F.2d 158 (4th Cir. 1980), it has been clearly established that inmates who are particularly vulnerable need to be protected.[5] As the Eighth Circuit has explained:

> the substantial risk of serious harm that Reece faced appears to be obvious in the circumstances of this case. Reece was a 'snitch' and had

---

[5] While *Gullatte* applied an erroneous "should have known" standard in light of *Farmer,* this part of *Gullatte*'s holding has never been challenged.

> testified for the prosecution in a murder trial, facts known to the prison population as well as prison officials. . . . As *Farmer* counsels, 'a fact finder may conclude that a prison official knew of a substantial risk from the fact that the risk was obvious . . . ' . . . 114 S.Ct. at 1981.

Reece v. Groose, 60 F.3d 487, 491 (8th Cir. 1995).

In *Taylor v. Michigan Dept. of Corrections*, 69 F.3d 76 (6th Cir. 1995), the Court had before it a remarkably similar case. There, the psychologist concluded that the plaintiff

> is a rather unstable individual with serious problems in a number of areas, and there is a high likelihood he will become a serious management problem while institutionalized. Simply, the stress of entering the institution may be enough to result in acting out and causing a deterioration in his already limited defenses and coping skills.

Id. at 78. He argued that therefore he was particularly vulnerable to attacks. *Id.* The Court agreed.

> *Farmer* makes it clear that the correct inquiry is whether he had knowledge about the substantial risk of serious harm to a particular class of persons, not whether he knew who the particular victim turned out to be.

Id. at 81, *citing Farmer*, 114 S.Ct. at 1982, and *Butler v. Dowd*, 979 F.2d 661, 667 (8th Cir. 1992).

It is exactly this point that both courts below completely ignored. The District Court at App. 12a noted the deceased "had a history of mental illness" and set out in detail the facts behind such conclusions at App. 12a, but

did not apply *Farmer* to those facts. Indeed, he took no note of the implication of the assailant's condition. *See Zarnes v. Rhodes*, 64 F.3d 2851 (7th Cir. 1995); *Haley v. Gross*, 86 F.3d 630 (7th Cir. 1986). Thus, painting in very broad strokes, he excused defendant English, officers Gober, Davis, Gause, and Kennard.

Despite the fact that this case was decided on motion for summary judgment, neither Court gave plaintiff any inference whatsoever and rewarded defendants with the "refuge" that this Court did not grant them in *Farmer*.

2. The Court's Decision Below Directly Conflicts With *Farmer*, *Anderson v. Liberty Lobby, Inc.*, and *Reeves v. Sanderson Plumbing Products, Inc.*

This case arose on summary judgment, and the Court failed to apply the proper standards. The Court notes that the deceased

> was relocated to Cell 411 on February 22, 1996 and then either moved into Cell 415 of his own will or was moved there by fellow inmates. Jail staff either did not know about this move or did not do anything about it.

(App. 12a). One would think that this issue of fact would be particularly important. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1985). Added to the fact as discussed above that he was a member of a particularly vulnerable group was one more fact.

> Statements of fellow inmates indicate that Dover had hit another inmate the week before and exhibited other violent tendencies.

(App. 5a). The record is completely barren as to whether the defendants knew this or not. Such knowledge would meet the *Farmer* standard. *Billman v. Indiana Dept. of Corrections*, 56 F.3d 785, 788 (7th Cir. 1995).

What is undisputed is that defendant Cheatham speaking on behalf of all the defendants denied that there had ever been such an attack. In *Reeves v. Sanderson Plumbing Products, Inc.*, 120 S.Ct. 2097, 2108 (2000), this Court applied F.R.C.P. 50 and observed that, when defendants give false information about a material fact, then the fact finder is entitled to infer the opposite was true. The inference in this case is that the defendants, in fact, did know of the prior attack and that the knowledge of the assailant's and the deceased's mental conditions would have clearly met the *Farmer* standard.

In *Reeves*, the Court noted:

> the standard for granting summary judgment 'mirrors' the standard for judgment as a matter of law, such that 'the inquiry under each is the same.'

120 S.Ct. at 2100. Petitioner respectfully requests that the Court take this opportunity to apply the Reeves principle to summary judgment and to cases under 42 U.S.C. §1983.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

RALPH GOLDBERG, Bar No. 299475
Attorney for Petitioner

315 W. Ponce de Leon Ave.
Suite 430
Decatur, GA 30030
(404) 377-4615

APPENDIX A

DO NOT PUBLISH

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 00-10895

D.C. Docket No. 98-00585-CV-MHS-1

JERRY TURNBOW GARLINGTON, Individually and as Administrator of the Estate of Eric Turnbow, and for the Benefit of His Next of Kin, — Plaintiff-Appellant,

versus

DEKALB COUNTY, a political subdivision of the State of Georgia, CHANDLER BRIDGES, Sheriff, individually and as Sheriff of DeKalb County, DENNIS CHEATHAM, Capt., R.S. MANN, Jail Division Captains, MAX STANLEY, Lt. et al., — Defendants-Appellees,

LIANE LEVETAN, ELAINE BOYER, GALE WALLDORFF, JACQUELINE SCOTT, KEN DAVIS, et al., — Defendants.

Appeal from the United States District Court for the Northern District of Georgia

---

(September 18, 2000)

Before TJOFLAT, BIRCH and DUBINA, Circuit Judges.

PER CURIAM:

We AFFIRM on the basis of the well-reasoned opinion of the district court.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JERRY TURNBOW GARLINGTON,	:	CIVIL ACTION
Plaintiff,	:	1:98-CV-585-MHS
v.	:	
DEKALB COUNTY, et al.,	:	
Defendants.	:	

ORDER

(Jan. 10, 2000)

This civil rights action is before the Court on two motions for summary judgment. The Court's rulings are summarized below.

Background

Jerry Turnbow Garlington asserts a 42 U.S.C. § 1983 claim individually and as administrator of the estate of her late son, Eric Turnbow, against DeKalb County, a number of DeKalb County officials, Wexford Health Sources, which provided medical services at the jail, and Dr. Roderick Edmond, Wexford's Medical Director, based on alleged violations of Eric Turnbow's civil rights while he was a pretrial detainee at the DeKalb County Jail. According to plaintiff, these alleged violations culminated in his death at the hands of his cellmate, Richard Dover, on February 25, 1996.

Eric Turnbow was taken into custody at the DeKalb County Jail on a charge of terroristic threats on February 1. 1996. A magistrate judge set bond that day and ordered an evaluation of Turnbow's mental health status at the Georgia Mental Health Institute. Turnbow had a history of mental illness. Turnbow was then placed in Cell 402, Unit 3SW, a unit of the jail designated for inmates with mental health problems.

On February 16, a paraprofessional on the jail mental health staff evaluated Turnbow. Three days later, a staff psychiatrist, Dr. Rand, evaluated him and prescribed several psychotropic medications. Then, on February 23, plaintiff, Turnbow's mother, contacted the jail and advised them that he was not taking his medication.

In the meantime, two detention officers in Unit 3SW decided to move Turnbow from Cell 402 to Cell 411. He was moved on February 22. Later that day, Turnbow moved to Cell 415, where another mentally ill inmate, Richard Dover, a/k/a John Doe, was housed. The exact nature of this relocation is unclear. Either Turnbow or other inmates instigated it. Either jail staff went along or did not notice it.

On the afternoon of February 25, jail staff discovered Eric Turnbow lying in Cell 415 in a pool of blood. Dover, his cellmate, had severely beaten Turnbow. Jail medical staff treated Turnbow until emergency medical services arrived and transported him to Grady Hospital, where he died several hours later. Dover was charged with Turnbow's murder, but he was found mentally incompetent to stand trial and was institutionalized.

Subsequently, it was discovered that Dover should have been released from the DeKalb County Jail on February 8, 1996, but was inadvertently kept at the jail. Dover had been charged with public drunkenness in December 1995, and released for time served on January 6, 1996. Later that same day, he was arrested on a disorderly conduct charge by a DeKalb police officer, Lieutenant McGlamery. Dover was returned to the jail. He was transported by McGlamery for his court appearance on the charge on February 8, 1996. Again, his sentence was time served. When McGlamery returned to the jail with Dover that day, he failed to advise jail administration of the disposition of the charge. The court did not communicate it either. Therefore, Dover remained at the jail. Statements of fellow inmates indicate that Dover had hit another inmate the week before and exhibited other violent tendencies.

An investigation into the incident resulted in disciplinary action against two detention officers, neither of whom are defendants to this action. Detention Officers Camp and Bialk were cited for "incompetence" – Camp for failing to notify supervisors when Turnbow was relocated from Cell 402 to Cell 411, and Bialk for failing to update Richard Dover's records when his identity was discovered.

In the compliant, plaintiff asserts that defendants, acting under color of state law, violated Eric Turnbow's rights under the Fourth, Eighth and Fourteenth Amendments to the United States Constitution by acting with deliberate indifference to his medical needs as manifested by (1) failure to obtain a court-ordered mental health evaluation at the Georgia Mental Health Institute, (2)

failure to take action when Turnbow refused to take his psychotropic medications, (3) failure to record Turnbow's relocation to a different cell, (4) failure to remove Turnbow from the cell of Richard Dover, (5) failure to supervise jail employees and enforce jail policies, and (6) failure to release Dover from the jail on February 8, 1996. Plaintiff also asserts under Georgia law claims for breach of legal duty and wrongful death.

Summary Judgment Standard

Under Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is appropriate when there is "no genuine issue as to any material fact . . . and the moving part is entitled to judgment as a matter of law." In *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), the Supreme Court held that this burden could be met if the moving party demonstrates that there is "an absence of evidence to support the non-moving party's case." *Id.* at 325.

At that point, the burden shifts to the non-moving party to go beyond the pleadings and present specific evidence giving rise to a triable issue. *Id.* at 324. In deciding whether summary judgment is appropriate, the Court must construe the evidence and all inferences drawn from the evidence in the light most favorable to the non-moving party. *White v. Mercury Marine*, 129 F.3d 1428, 1430 (11th Cir. 1997).

Discussion

I. Motion for Summary Judgment by DeKalb Defendants

The DeKalb County defendants are the County itself, DeKalb County Sheriff Chandler Bridges, Captains Cheatham and Mann of the DeKalb County Jail, Lieutenant McGlamery of the DeKalb County Department of Public Safety, and a number of detention officers and other jail staff who were on duty from February 22 to February 25, 1996: Stanley, Shanks, Ramsey, Freeman, English, Christensen, Gober, Ojeda, Gause, and Davis.[1]

A. DeKalb County

DeKalb County moves for summary judgment as to plaintiff's Section 1983 claim, arguing that plaintiff has failed to show that it has a policy, practice or custom pursuant to which its employees deprived Turnbow of constitutional rights. Under *Monell v. New York Dept. of Social Servs.*, 436 U.S. 658, 694 (1978), a plaintiff may only recover against a county under 42 U.S.C. § 1983 for injuries caused by its agents or employees if the injuries occurred as a result of the employees' execution of an official policy, practice, or custom. There must be a direct causal link between the county's policy and the deprivation of constitutional rights. *Collins v. City of Harker*

---

[1] Defendants Bridges and McGlamery are sued in their official and individual capacities. Because the official capacity suits duplicate the suit against the county, the Court does not specifically address them in this order, *Free v. Granger*, 887 F.2d 1552, 1557 (!1th Cir. 1989).

Heights, 503 U.S. 115, 123 (1992). The showing of causation must be particularly strong when plaintiff relies upon a single incident, as plaintiff does here. *Vineyard v. County of Murray*, 990 F.2d 1207, 1212 (11th Cir. 1993).

In the complaint, plaintiff alleges that DeKalb County had a policy, practice, or custom of (1) casual relocation of inmates, (2) failing to follow up on disposition of inmates who went to court, and (3) seeking inmate approval and decision-making as to where inmates should be located. The only evidence supporting these allegations, however, is the incident underlying this action. In response, DeKalb County has produced affidavits and its employee manual, which refute plaintiff's allegations.

This evidence shows that the Jail Operations Manual requires that the Classification Unit assign inmates to cells under objective criteria. The Classification Unit is also in charge of reassignments. There is no provision for inmate involvement or approval. Under jail policy, inmates who change cells without authorization are subject to discipline. If an inmate is at risk of assault, he is separated from the source of the risk, under jail policy. In addition, the manual sets for the procedures to be followed by county employees after an inmate appears in court. Either the officer who takes the inmate to court informs jail personnel of the disposition of the proceeding, or jail personnel contact the court themselves.

Assuming plaintiff's allegations are true, these procedures may not have been totally adhered to in this case. There is no showing, however, of any other incident or pattern of incidents involving similar violations of these

policies. As a result, the Court concludes that plaintiff has failed to raise a genuine issue of material fact supporting his claims against the County. Therefore, the Court grants DeKalb County's motion for summary judgment on plaintiff's Section 1983 claims. The County is protected from the state law claims by sovereign immunity. Ga. Const. Art. I, Sec. II, Par. IX. *See also Howard v. City of Columbus*, 239 Ga. App. 399, 521 S.E.2d 51, 65 (1999).

B. Dekalb County Individual Defendants

1. Sheriff Chandler Bridges

Plaintiff asserts claims under 42 U.S.C. § 1983 and state law against Sheriff Chandler Bridges for failure to supervise his employees, enforce policy, provide adequate security and health care, and breach of duty to inmates. There is no allegation that Bridges had any contact with Eric Turnbow. Bridges cannot be held liable under Section 1983 on a theory of *respondeat superior*. *Hardin v. Hayes*, 957 F.2d 845, 849 (11th Cir. 1992). There must be a causal connection between Bridges' action and the constitutional deprivation. *Brown v. Crawford*, 906 F.2d 667, 671 (11th Cir. 1990).

Assuming for the moment that there was a constitutional violation, plaintiff presents no evidence showing any causal connection between any actions by Bridges and the injury to Turnbow. The policies were in place, even if, as plaintiff alleges, they were not followed to the letter. And there is no showing that Bridges failed to discipline officers who did not follow the policies. In fact, defendants have produced evidence that two detention

officers involved in this case were disciplined for not following the guidelines in the Jail Operations Manual.

The sheriff has a ministerial duty under state law to provide adequate medical attention to inmates. O.C.G.A. § 42-4-4; *Cantrell v. Thurman*, 231 Ga. App. 510, 514 (1998). Plaintiff alleges that Bridges breached this duty. Because the duty is ministerial, not discretionary, sovereign immunity does not protect a sheriff from negligent performance of it. Ga. Const., Art. I, Sec. II, Par. IX(d).

Plaintiff, however, has failed to demonstrate that Turnbow received inadequate or negligent medical attention in the face of defendants' evidence that he received fairly close medical and mental health attention. While it is true that Turnbow refused to take his medication on several occasions, this is not attributable to the jail medical providers or the sheriff. Moreover, the causal link between his medical treatment and his death at the hands of another inmate is attenuated.

In addition, plaintiff asserts a claim for wrongful death. The Court concludes that Bridges is entitled to summary judgment on this claim because plaintiff has neither shown negligence by Bridges, nor a proximate causal connection between any actions by Bridges and Turnbow's death. Therefore, the Court concludes that Sheriff Chandler Bridges is entitled to summary judgment on all of the claims against him.

2. Jail Personnel

The remaining individual DeKalb County defendants, the captains and detention officers, assert that they

are entitled to qualified immunity, which protects state and local officials from lawsuits based on actions taken within their discretionary authority unless the actions violated clearly established law. *Harbert Int'l, Inc. v. James*, 157 F.3d 1271, 1281 (11th Cir. 1998). In other words, qualified immunity "provides ample protection to all but the plaintiff incompetent or those who knowingly violate the law." *Malley v. Briggs*, 475 U.S 335, 341 (1986).

Plaintiff contends that these defendants are liable because they failed to separate Dover from the other inmates after he had shown violent tendencies, and permitted Turnbow to relocate to the cell with Dover. The individual defendants contend that no constitutional violation occurred, but even if it did they are immune from suit.

The first step in analyzing whether defendants are entitled to qualified immunity is to determine whether plaintiff has shown a deprivation of a constitutional or statutory right. *Conn v. Gabbert*, 119 S.Ct. 1292, 1295 (1999); *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 1714 n.5 (1998). If plaintiff has not, defendant is entitled to summary judgment.

Plaintiff alleges violations of the Fourth, Eighth, and Fourteenth Amendments. The complaint, however, does not allege any fact supporting a claim under the Fourth Amendment, which protects, *inter alia*, against unreasonable searches and seizures. Similarly, the Eighth Amendment, which prohibits the infliction of cruel and unusual punishment, does not apply to pre-trial detainees. *Belcher v. City of Foley*, 30 F.3d 1390, 1396 (11th Cir. 1994). Eric

Turnbow was a pre-trial detainee when he was killed by Richard Dover at the DeKalb County Jail.

Cases involving conditions of confinement for pre-trial detainees are governed by the due process clause of the Fourteenth Amendment, rather than the Eighth Amendment, but the standards are the same. *Id.* In order to establish a violation based on failure to protect an inmate from attack by another inmate, plaintiff must show that "the [prison] official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). Negligence is not enough to support Section 1983 liability. *Brown v. Hughes*, 894 F.2d 1533, 1537 (11th Cir. 1990).

Plaintiff has presented evidence showing the following. Eric Turnbow was mentally ill. A magistrate judge directed a mental health evaluation of Turnbow at the GMHI, which never occurred. On the evenings of February 19 through 21, he refused to take his medication, as administered by jail medical staff. He was relocated to Cell 411 on February 22, 1996, and then either moved into Cell 415 of his own will or was moved there by fellow inmates. Jail staff either did not know about the move or did not do anything about it.

Richard Dover, who was also mentally ill and had exhibited violent tendencies by getting into a fight with an inmate the week before, was in Cell 415 as well. Jail records show that on January 3, 1996, a mental health referral was made on behalf of Dover because he was

acting strangely with a razor, and he had razor cuts. Other reports stated that he talked to himself and hit the walls. The two inmates did not appear to have problems until the incident. He was not even supposed to be in the jail, but because of an administrative error, he was.

Detention Officer Gause, who was on the day shift in Unit 3SW on February 25, 1996, stated in an incident report that he had not noticed any animosity between Turnbow and Dover, but that Turnbow had exhibited some erratic behavior that day. Sergeant English was the Detention Supervisor for that shift, and also noted for the record that detention officers informed him that "Turnbow had been acting up earlier, but had settled down." Detention Officer Davis also reported that Turnbow was acting a little strangely, but he told Turnbow and Dover to go to their cell and they did so without incident. The record indicates that the only involvement by Detention Supervisors/Sergeants Shanks, Smoot, Ramsey, and Freeman was to respond to the incident after it occurred.

The Court concludes that plaintiff's factual allegations do not demonstrate that there was an excessive risk to Turnbow posed by his being in a cell with Dover, nor do they show that any of the jail personnel knew about a substantial risk of serious harm to Turnbow and disregarded it. If anything, plaintiff raises a genuine issue of fact regarding whether some of the officers were negligent in not keeping a closer watch on the location of inmates. Negligence, however, does not rise to the level required to establish a violation of Turnbow's constitutional rights. Since there is no violation, there is no claim under Section 1983.

3. Lieutenant McGlamery

Similarly, Lieutenant McGlamery's involvement in this action is limited to his alleged wilful and wanton failure to notify jail staff that Richard Dover was to be released on February 8, 1996. Plaintiff contends that this act by McGlamery caused the death of Eric Turnbow because otherwise Dover would not have been at the jail when the incident occurred. The jail manual requires transporting officers to notify jail staff of the disposition of court proceedings. If the transporting officer does not know, jail staff are to contact the appropriate court for the information.

The affidavit of Major Cheatham indicates the recorder's court should have notified the jail. Statements by jail staff show that they never received any information from the court, nor did they contact the court themselves. In any case, the Court concludes that plaintiff has failed to raise a genuine issue of material fact as to whether Lieutenant McGlamery was more than merely negligent. Since negligence is insufficient to support liability, the Court grants summary judgment as to Lieutenant McGlamery.

4. State Law Claims against Individual Dekalb Defendants

Plaintiff asserts claims under O.C.G.A. § 51-4-1 (wrongful death) and § 51-1-6 (breach of legal duty). The individual Dekalb County defendants move for summary judgment on plaintiff's state law claims based on the immunity of state officials from suits based on discretionary acts, as long as the officials do not act "oppressively,

maliciously, corruptly, or without authority of law." O.C.G.A. § 36-33-4 (Michie 1993). Plaintiff has not proffered any evidence that the jail officials acted with malice, or oppressively, or corruptly, or without authority of law. Therefore, the Court grants the motion for summary judgment on plaintiff's state law claims.

II. Motion for Summary Judgment of Wexford Defendants

A. Wexford Health Sources

Wexford Health Sources and its medical director, Dr. Roderick Edmond, move for summary judgment. In February 1996, Dekalb County Community Service Board (CSB) provided the mental health services at the jail, while Wexford provided inmate medical care. Therefore, the only actions which Wexford would have responsibility for are the administration of the drugs prescribed for Turnbow, since CSB physicians and personnel evaluated and treated his mental health problems.

In order to establish a violation based on inadequate medical care, plaintiff must show "deliberate indifference to serious medical needs." *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). "[D]eliberate indifference has three components: (1) subjective knowledge of a risk of serious harm; (2) disregard of that risk; and (3) by conduct that is more than mere negligence." *McElliott v. Foley*, 182 F.3d 1248, 1255 (11th Cir. 1999). In order to survive a motion for summary judgment, plaintiff must come forward with evidence showing subjective awareness of the risk. *Id.*

Wexford staff saw Turnbow on February 2 and 5. Mestinon was prescribed to treat his myasthenia gravis. The records show that his mother called the jail medical authorities and told him that he was schizophrenic within the first several days of his custody. Wexford administered Turnbow's medications.

On February 16, a CSB paraprofessional evaluated Turnbow, found him "hyperverbal, delusional, and paranoid," and prescribed psychotropic medications. Turnbow indicated that he didn't like taking the medications prescribed to him because "it messes up my groin." Dr. Rand, a psychiatrist with CSB, evaluated him several days later and prescribed several more drugs.

Turnbow was again evaluated on February 21. Around this time, his mother again called that he was not getting his medication. The nurse administering the medication noted that he was refusing the psychotropic drugs, but taking mestinon. The medical staff followed up on this complaint, and he was seen by the medical and the mental health staff at separate times on February 23.

Plaintiff has not raised a genuine issue of fact that the Wexford staff exhibited deliberate indifference to a serious medical need. In addition, even if the Court were to view this as deliberate indifference, the causal link between the medical care and the harm to Turnbow is too weak to hold Wexford liable under Section 1983.

B. Dr. Roderick Edmond

Dr. Edmond was notified when Turnbow was transported to Grady Hospital, and conducted an investigation

into the incident following Turnbow's death. Prior to that, he had no involvement with Turnbow or his medical treatment. As a supervisor, Edmond is liable under 42 U.S.C. § 1983 if he participated in a constitutional violation or enacted a policy that violated plaintiff's constitutional rights. *Adams v. Poag*, 61 F.3d 1537, 1544 (11th Cir. 1995). There is no evidence that plaintiff's constitutional rights were violated. Therefore, the Court grants Dr. Edmond's motion for summary judgment.

C. State Tort Claims Against Wexford and Edmonds

Plaintiff asserts claims for wrongful death and breach of duty against the Wexford defendants. Not only has plaintiff failed to show any breach of duty that Wexford employees or Edmonds owed to Turnbow, but plaintiff has also failed to show a proximate causal link between the medical treatment of Turnbow and his death at the hands of Dover. "Although ordinarily a jury question, lack of proximate cause may be decided as a matter of law when the causal connection between the defendant[s]' conduct and the injury is too remote for the law to countenance a recovery." *Cantrell*, 231 Ga. App. at 515. Because the Court concludes that defendants neither gave inadequate medical care to Turnbow nor acted in any way that proximately caused his death, the Court grants the Wexford defendants' motion for summary judgment on plaintiff's state law claims.

Summary

For the foregoing reasons, the Court GRANTS the motion of DeKalb County, Chandler Bridges, Christensen, Ojeda, Cheatham, Mann, Stanley, Shanks, Ramsey, Gober, Davis, Gause, McGlamery, Freeman, and English for summary judgment [#48-1]; GRANTS the motion of Wexford Health Services and Roderick Edmond for summary judgment [#49-1]; GRANTS plaintiff's motion to extend time to respond to summary judgment [#51-1]; and DISMISSES this action.

IT IS SO ORDERED, this 10 day of ~~December, 1999~~ Jan., 2000.

/s/ Marvin H. Shoob
Marvin H. Shoob, Senior Judge
United States District Court
Northern District of Georgia

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JERRY TURNBOW GARLINGTON,	)	
	)	CIVIL ACTION FILE
Plaintiff,	)	
	)	NO. 1:98-cv-0585-MHS
vs.	)	
	)	
DEKALB COUNTY, ET AL.,	)	
	)	
Defendants.	)	

JUDGMENT

This action having come before the court, Honorable Martin H. Shoob, United States District Judge, for consideration of defendants' motions for summary judgment, and the court having granted said motion, it is

Ordered and Adjudged that the plaintiff take nothing; that the defendants Dekalb County, Chandler Bridges, Christensen, Ojeda, Cheatham, Mann, Stanley, Shanks, Ramsey, Gober, Davis, Gause, McGlamery, Freeman, English, Wexford Health Services, and Roderick Edmond recover its costs of this action, and the action be, and the same hereby, is dismissed.

Dated at Atlanta, Georgia, this 14th day of January, 2000.

LUTHER D. THOMAS
CLERK OF COURT

By: /s/ Evelyn Rivera
Deputy Clerk

Prepared, Filed, and Entered
in the Clerk's Office
January 14, 2000
Luther D. Thomas
Clerk of Court

By: /s/ Evelyn Rivera
Deputy Clerk